**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 7046 of 1987**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.A.PUJ**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KIRAN CHANDULAL BHAVSAR - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**
MR PRAKASH K JANI for Petitioner(s) : 1,
MR L.B.DABHI Ld.AGP for Respondent(s) : 1,
MR SV PARMAR for Respondent(s) : 2,
MR SG BHATT for Respondent(s) : 2 - 3.

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**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 10/01/2006**

**ORAL JUDGMENT**

1. The petitioner has filed this petition under Article 226 of the Constitution of India praying

for quashing and setting aside the action of the respondent no.2 in terminating petitioner's services and further prayed for direction to the respondent to take the petitioner in service on the post of Deputy Engineer with all consequential benefits.

2. It is the case of the petitioner that the petitioner was appointed as Assistant Engineer on 14th September, 1983 in the office of Deputy Executive Engineer, Rural Roads Panchayat Sub-Division, Mangrol, Dist:Surat. Petitioner resumed his duties on 20.09.1983 as an Assistant Engineer. It is averred in the petition that the petitioner was rendering his services sincerely, honestly and diligently and to the utmost satisfaction of his superiors. The petitioner was thereafter selected on the post of Deputy Engineer Class-II officer on 12.03.1985. Pursuant to the petitioner's selection, on 04.04.1985, the District Development Officer, Surat, issued letter to the petitioner requiring him to submit an application and the certificate showing his date of birth in response to the order

dated 12.03.1985. After complying with all the requirements, the petitioner has reported his duty on 01.06.1985. Thereafter to the utter surprise of the petitioner, the petitioner's services were terminated on 20th September, 1986 without assigning any reason or without giving any opportunity of being heard to the petitioner.

3. This order is under challenge in the present petition.

4. Mr.P.K.Jani, the learned advocate appearing for the petitioner has submitted that the petitioner was relieved from the services without any cogent reasons and without giving proper opportunity to the petitioner. He has further submitted that the action on the part of the respondent relieving the petitioner from the services is bad in law and quite contrary to the provisions of law and constitution of India and also contrary to the stipulation contained in his appointment order.

5. It is further submitted that colleagues of the

petitioner have been continued and only the petitioner was relieved and hence, the impugned action of the respondent was discriminatory in nature and violative of Articles 14 and 16 of the Constitution of India. He has further submitted that the petitioner was relieved from the services with some ulterior motive that right from the beginning the respondents were out to harass the petitioner and hence, the impugned action of the respondent was mala-fide in nature. It is therefore strongly urged before the court that the impugned action of the respondent is liable to be quashed and set aside and petitioner may be ordered to be resumed his duty as Deputy Engineer.

6. An affidavit in reply is filed by respondent no.2. Shri S.V.Parmar, learned advocate appearing for respondent no.2 has submitted that the petitioners' appointment dated 14th September, 1983 was purely on temporary basis for a period of six months or till the Assistant Engineer was available from the Gujarat Public Service Commission, whichever was earlier. He has further submitted

that the petitioner was at Sr.No.79 in the list of 100 Assistant Engineers, and he was allotted to the Surat District Panchayat, alongwith some other Asstt. Engineers from this list. The District Panchayat in pursuance of the above order had appointed the petitioner under Surat District Panchayat and was posted at Mangrol Sub-division. All the Assistant Engineers who were appointed under the above said order dated 03.09.1983 were ordered to be relieved by the Government order dated 09.01.85. The petitioner was accordingly relieved on 15.02.1985.

7. Mr.Parmar has further submitted that Government thereafter, Road and Building Division, by its order dated 12.03.85 appointed 32 Assistant Engineers(C) (Class-II) for a period of six months or till Assistant Engineers selected by the Gujarat Public Service Commission were available, whichever was earlier, purely on temporary basis. The name of the petitioner appeared in the said list at Sr.No.22. He has further submitted that the Government had also issued a Circular dated 12.3.85

clarifying the Government Order dated 12.3.85 that the Assistant Engineers earlier appointed on ad-hoc basis and who were relieved by order dated 09.01.85 and who have been included in the list of Assistant Engineers in the Government Order dated 12.03.85 should be asked to give the application with their birth date and thereafter their appointment should be made. The petitioner by his application dated 10.04.85' agreed to the ad-hoc basis as per Government order dated 12.03.85 and also produced school-leaving certificate for his birth date. The petitioner thereafter was given appointment alongwith others by the District Development Officer posting the petitioner in R&B Sub-division at Mangrol. Period of the appointment of the petitioner was thereafter extended by order dated 09.07.1986. Thereafter, the petitioner was relieved by order dated 04.09.86 alongwith all other Assistant Engineers who were appointed purely on ad-hoc, temporary basis.

8. Mr.Parmar has further submitted that the Government in R&B Department has made appointment

of the petitioner and other Assistant Engineers purely on ad-hoc and temporary basis for a period of six months or till the candidates selected by G.P.S.C. whichever was earlier. He has further submitted that when the candidates selected by the G.P.S.C. were available, the Government made orders relieving such Assistant Engineers including the petitioner and hence, the order of relieving the petitioner or terminating the services of petitioner is just, legal and proper and hence no interference is called for.

9. This petition was admitted by this Court on 20.11.1992 and it was ordered to be heard alongwith S.C.A.No.1327 of 1987. Special Civil Application No.1327 was heard and disposed of by this Court on 23rd August, 1988. An identical issue was involved in the said petition. While disposing of the said petition, this court has held that post of Assistant Engineers falls within the purview of the G.P.S.C. Admittedly the petitioners were not appointed through G.P.S.C. The court has also referred to S.C.A.No.5993 of 1986 and other allied

matters to consider the case of similarly situated Assistant Engineers who were recruited between 1981 and 1984 in the pay-scale of Rs.550-1000 plus allowances in the different circle of the Irrigation Department. While considering these cases, it was pointed out that post of Assistant Engineer was a Gazetted Post and could only be filled in through GPSC in view of Article 320 of the Constitution. Since the petitioners of the present case were not appointed through Gujarat Public Service Commission, their appointments were clearly contrary to the relevant recruitment rules and, therefore, illegal and irregular. The court has further held that they were not selected by the GPSC and were not recruited in accordance with the relevant recruitment rules. They were, therefore, not entitled to claim continuance in service or regularization of service since their very entry was in breach of the recruitment rules. The court further held that there was no need of giving them a hearing before terminating their services to make room for regular recruits. The court has also negatived the contentions raised on behalf of the

petitioner that the petitioners were workmen within the meaning of Section 2(s) of the Industrial Disputes Act. The said petition was accordingly dismissed by the Court.

10. In view of the aforesaid decision rendered by this Court in S.C.A.No.1327 of 1987 and in view of the contentions raised by the respondent in their affidavit in reply and submissions made by learned advocate appearing for the respondent, the Court does not find any substance in this petition. Hence, the present petition is accordingly dismissed.

11. Rule is discharged with no order as to costs.

(K.A.PUJ, J.)

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